

GVNW Consulting, Inc.

Replies in WC Docket Nos. 05-195, 02-60, and 03-109; CC Docket Nos. 96-45, 02-6, and 97-21  
December 19, 2005

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comprehensive Review of Universal	)	WC Docket No. 05-195
Service Fund Management,	)	
Administration, and Oversight	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service	)	
Support Mechanism	)	CC Docket No. 02-6
	)	
Rural Health Care Support Mechanism	)	
	)	WC Docket No. 02-60
Lifeline and Link-Up	)	
	)	WC Docket No. 03-109
Changes to the Board of Directors for	)	
the	)	CC Docket No. 97-21
National Exchange Carrier Association,		
Inc.		

**REPLY COMMENTS OF GVNW CONSULTING, INC.**

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## **Executive Summary**

There is not a need for radical change that would serve to sweep away the many good aspects of current USF administration. While the universal service support mechanisms are the subject of current scrutiny and criticism, there is no evidence of pervasive waste, fraud, and abuse. The Commission must keep in mind that rural infrastructure costs are not paid in full up front, as the cost of maintaining and upgrading facilities is an ongoing process. Universal service support mechanisms have played a key role in assuring that rural customers have been able to receive affordable service.

As the Commission reviews the current USF administration process and contemplates refinements, an important metric to keep in mind is that the administrator must possess a thorough knowledge and understanding of the telecommunications industry, especially the circumstances facing rural ILECs that provide service in high-cost areas. The Commission should also

take steps to assure that USF programs are administered in an equitable manner, responsive to the needs of all participants, and receptive to input from diverse constituencies.

It is also crucial for the rules to distinguish between ministerial error and errors that are the result of intentional fraud or negligence. With the amount of data that is input related to support mechanisms, there will be an occasional input type error. In terms of penalties, there should be clear distinction between ministerial error and errors based on intent to deceive. Carriers should not be penalized an entire year of support for missing a filing deadline by a few hours or a few days. In terms of penalties, the appropriate level of penalty for a ministerial error should not unduly penalize the carrier and concomitantly the rates it must charge its customers to recover its costs.

## **INTRODUCTION AND BACKGROUND**

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, advanced services, and access charge reform for communications carriers in rural America. The purpose of these reply comments is to respond to the Notice of Proposed Rulemaking (NRPM) and Further Notice of Proposed Rulemaking (FNPRM) released by the Commission on June 14, 2005.

We have participated actively in prior rulemaking proceedings and applaud the Commission's current efforts to address the myriad of challenges

facing universal service programs today. As we will demonstrate in these replies, there is not a need for radical change that would serve to sweep away the many good aspects of current USF administration. While the universal service support mechanisms are the subject of current scrutiny and criticism, there is no evidence of pervasive waste, fraud, and abuse. The Commission must keep in mind that rural infrastructure costs are not paid in full up front, as the cost of maintaining and upgrading facilities is an ongoing process. Universal service support mechanisms have played a key role in assuring that rural customers have been able to receive affordable service.

We respectfully submit these reply comments for the Commission's consideration.

## **MANAGEMENT AND ADMINISTRATION OF THE USF**

### **Some parties seek to avoid oversight of their use of universal service funds**

In the comments filed by CTIA – The Wireless Association (CTIA), CTIA cleverly attempts to avoid the current level of review provided by the NECA with its suggestion at page 7 to replace NECA as the data recipient.

CTIA continues this theme at page 9 of its filing with a request to “reduce the five year planning requirement to 12-18 months.”

Apparently motivated by their direct input to the USAC governance process, CTIA recommends at page 9 of its filing that USAC replace the FCC.

As the Commission reviews the current USF administration process and contemplates refinements, an important metric to keep in mind is that the administrator must possess a thorough knowledge and understanding of the circumstances facing rural ILECs that provide service in high-cost areas. The Commission should also take steps to assure that USF programs are administered in an equitable manner, responsive to the needs of all participants<sup>1</sup>, and receptive to input from diverse constituencies.

## **OVERSIGHT OF THE USF**

### **Independent Audits need to recognize a basic cost/benefit test**

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<sup>1</sup> The administrative entity must also be able to work cooperatively with other designated entities. In accordance with current Commission rules, the NECA plays an important role in administering access charges. In light of the interrelationship between universal service funding and access charges, the Commission should encourage the USF administrator to work closely and cooperatively with the NECA to ensure that the settlement process is smooth and seamless. There is a benefit to the dual role that NECA plays with regard to providing the cost data, and USAC handling the administrative portion of the USF programs.

Beginning at paragraph 69, the Commission asks whether the current audit structure for the High-Cost program is appropriate and whether the FCC's rules should require independent audits of fund recipients. Many commenters stressed the need for any additional audits to meet basic cost/benefit analysis tests.

We submit that any proposed audit plans should be targeted and focused to high risk areas, and recognize that rural ILECs are already being reviewed and audited by independent external auditors, various other agencies, and the NECA. The NECA also reviews company financial data for consistency between the company records, cost study data, and USF data. This NECA review includes steps that provide assurance that all financial data reconciles to the company's financial statements and the balances that are subject to jurisdictional separations (post Part 64).

Despite the requests of several parties, we believe it unlikely that the Commission will exempt any carrier based on its small size. The Commission should exercise prudence with respect to the burden placed on the smallest carriers with regard to audit burdens. Any carrier audited should be allowed to treat the audit preparation and audit performance as interstate expenses recoverable from that jurisdiction. Additionally, we recommend that any additional audit investigations be limited to a twelve month period after the audit or investigation has commenced.

Different errors require different sanctions

Filing deadlines are necessary for the smooth operation and orderly administration of federal universal service fund programs. All carriers strive to meet each and every deadline and recognize the importance of meeting such requirements. But, in a system with the possibility of human error present, perfection is not always achieved. In order for the deadlines to have an impact, missing a deadline should generate some type of consequence.

It is also crucial for the rules to distinguish between ministerial error and errors that are the result of intentional fraud or negligence. With the amount of data that is input related to support mechanisms, there will be an occasional input type error. In terms of penalties, there should be clear distinction between ministerial error and errors based on intent to deceive. Carriers should not be penalized an entire year of support for missing a filing deadline by a few hours or a few days. In terms of penalties, the appropriate level of penalty for a ministerial error should not unduly penalize the carrier and concomitantly the rates it must charge its customers to recover its costs.

Penalizing a carrier an entire year of universal service support for missing a deadline for a few hours or few days that result in little or no administrative difficulty to USAC does not comport with the Congressional mandate that universal service should be “predictable and sufficient.”



In NECA's comments at pages 17-18, NECA offers some relevant observations, stating in part:

*Similarly, the Administrator should not be required to impose harsh penalties on companies for minor errors associated with certifications and data submissions. In recent years the Commission has frequently been called upon to grant waivers of deadlines where carriers have failed to submit certifications or data submissions on time despite having made reasonable efforts to comply with applicable deadlines. (footnote omitted) Rigid adherence to such deadlines means that it is possible for carriers to lose support for an entire quarter, or even longer, if a certification or data submission deadline is missed by so much as a day. This imposes unnecessary and unreasonable burdens on small companies, who must incur significant expense and uncertainty associated with waiver petitions as a result of minor ministerial errors. Rule provisions prohibiting the Administrator from "interpreting" Commission rules notwithstanding, effective program Administration requires that the Administrator be given latitude to make reasonable judgments regarding compliance with deadlines and other ministerial matters.*

Simply stated, NECA's suggestion that the Administrator be allowed a reasonable amount of flexibility to accept late filings without the need for Commission waiver action is on point. The current average response time to waiver requests by the Commission for relief of ministerial errors is not as responsive as was contemplated by Congress when the principles of "sufficient and predictable" were included in the Telecommunications Act of 1996. While we recognize that the Commission is faced with many pressing

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issues, the cash flow impacts to carriers that have 2003 and 2004 waivers  
granted in 2005 is an issue that we respectfully submit requires a more rapid  
response on the part of the Commission.

Respectfully submitted

Via ECFS on 12/19/05

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